



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 11-7

February 26, 2014

Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only

ORDER ON MOTION FOR ABEYANCE

The Department of Telecommunications and Cable ("Department") addresses Nexus Communications, Inc.'s ("Nexus" or "Company") request to hold the investigation in the above-captioned application in abeyance. For the reasons discussed herein, the Department grants Nexus's request.

On December 20, 2013, the Department granted in part, and denied in part Nexus's requests for confidential treatment of certain information requested by the Department in its investigation into Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only ("Application"). *See* Application, D.T.C. 11-7, Hearing Officer's Ruling at 22 (Dec. 20, 2013). In relevant part, the Department denied confidential treatment for Nexus's Lifeline subscriber counts and Universal Service Administrative Company's ("USAC") In-Depth Validations ("IDVs") of Nexus's intra-company's duplicates taken from the Company's Federal Communications Commission ("FCC") Form 555 filings. *Id.* On December 23, 2013, the Department extended the appeal period to January 13, 2014 at the Company's request. Email of Hearing Officer Kalun Lee to Attorney

Alan Mandl dated Dec. 23, 2013. On January 13, 2014, Nexus submitted its Motion for Abeyance (“Motion”), requesting that the Department hold its consideration of the company’s application in abeyance, pursuant to 220 C.M.R. § 1.04(5), pending the outcome of its appeals with the FCC regarding the FCC’s denial of confidential treatment of the aforementioned disclosures. Motion at 1-2.

The Department will hold a matter in abeyance when proceeding is an inefficient use of the Department’s and the parties’ resources. *E.g., Proceeding by the Dep’t of Telecomms. & Energy on Its Own Motion to Implement the Requirements of the FCC’s Triennial Review Order Regarding Switching for Mass Market Customers*, D.T.E. 03-60 Track A and Track B, *Interlocutory Order on Motion to Stay of Verizon New England, Inc. d/b/a Verizon Mass.*, at 16-17 (Apr. 2, 2004). At times where the Department and the FCC deal with similar issues, the Department will grant a party’s motion for abeyance if there is a risk of administrative inefficiency resulting from the Department’s rulings being deemed inconsistent with the FCC’s rules. *Investigation by the Dep’t of Telecomms. & Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements & Combinations of Unbundled Network Elements & the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Mass. Resale Servs. in the Commw. of Mass.*, D.T.E. 01-20, *Interlocutory Order on Part B Motions* at 19 (Apr. 4, 2001). The Company states in its Motion because “the issues that Nexus would raise on appeal from the Hearing Officer Ruling substantially overlap appeals that are now pending or will be filed shortly with the FCC regarding the substance and/or confidentiality of the same type of information”; abeyance is necessary to preserve its rights with respect to its appeals at the FCC; and abeyance

will conserve the Department's resources and allow the Department to take into account the FCC's actions. Motion at 1-2.

The Department grants the Motion in the interest of administrative efficiency and because it is in the public interest to permit Nexus to proceed in the manner requested in the Motion. The FCC's decision to deny confidential treatment of Nexus's Lifeline subscriber counts is still under appeal, and Nexus has indicated that it plans to appeal the Department's denial of the same. *See* Motion at 1-2. It may be that if the FCC denies Nexus's appeal, the Company will forego an appeal of the Department's decision. In that way, granting Nexus's Motion would indeed be more efficient. Even if Nexus were not to forego an appeal before the Department, the FCC's analysis of Nexus's appeal may assist the Department in consideration of any appeal of the Hearing Officer's December 20, 2013 Ruling.

Even if the FCC were to grant confidential treatment to Nexus's Lifeline subscriber counts, there remains potential for administrative efficiency. Determination of what constitutes a public record and what materials before the Department may be granted confidential treatment is governed by G. L. c. 25C, § 5 and the Massachusetts Public Records Law and relevant Massachusetts precedent, G. L. c. 4, § 7(26); G. L. c. 66, § 10, and not the federal law controlling the FCC. Freedom of Information Act, 5 U.S.C. § 552(b), 47 CFR 0.459. However, interpretations of the federal Freedom of Information Act by the FCC may inform the Department, even if they would not control. *Pet. of AT&T Commc'ns of New England, Inc., pursuant to G.L. c. 159, s. 12 and 220 C.M.R. 1.04, for an alternative mode of regulation of the Co.'s Mass. intrastate telecomms. Servs.*, D.P.U. 91-79, (June 22, 1992) at 54. Moreover, allowance of the Motion will permit Nexus to determine whether to appeal the Department's decision regarding confidential treatment in light of the FCC's determination, an efficiency that

inures primarily to the Company by permitting it to address its appeals in series and not simultaneously.

As to the IDVs, Nexus states that it believes “USAC materially erred in its finding of ‘intra-company duplicates’ and will ask the FCC to invalidate those erroneous findings,” and that “potentially inaccurate information regarding Nexus should not be subject to public disclosure.” Motion at 3-4. Without taking a position regarding the veracity of USAC’s IDVs, the Department agrees it would be prudent to pause its investigation of Nexus’s Application until the Company’s appeals with the FCC are resolved.

For the reasons discussed above, the Department grants Nexus’ Motion for Abeyance. The Department will hold its investigation into the Application in abeyance pending the outcome of the FCC appeals identified in the Motion. The Department further agrees that the Lifeline subscriber counts and IDVs from the Company’s FCC Form 555 will not be publicly disclosed until after a status conference that will take place within 30 days after a ruling on Nexus’s appeal is made by the FCC. The Department directs Nexus to update the Department in writing regarding the status of the appeal before the FCC every three (3) months following the date of issuance of this order. In the event Nexus does not provide such an update, the Department may dismiss this matter without prejudice.

/s/ Kalun Lee
Kalun Lee
Hearing Officer

NOTICE OF RIGHT TO APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.